



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0259; FRL-9932-33-Region 6]

**Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1-hour Ozone
Nonattainment Area; Texas**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a redesignation substitute demonstration provided by the State of Texas that the Houston-Galveston-Brazoria 1-hour ozone nonattainment area (HGB area) has attained the revoked 1-hour ozone National Ambient Air Quality Standards (NAAQS) due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. Final approval of the redesignation substitute demonstration will result in the State no longer being required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area which have not already been approved into the State Implementation Plan (SIP). In addition, final approval will allow Texas to seek to revise the Texas SIP to remove anti-backsliding measures from the active portion of its SIP if it can

demonstrate, pursuant to Clean Air Act (CAA) section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA.

DATES: Written comments must be received on or before **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2014-0259, by one of the following methods:

- www.regulations.gov. Follow the online instructions.
- E-mail: Ms. Tracie Donaldson at Donaldson.tracie@epa.gov.
- Mail or delivery: Ms. Mary Stanton, Chief, Air State and Tribal Operations Section (6PD-S), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket No. EPA-R06-OAR-2014-0259. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665-6633,

Donaldson.tracie@epa.gov. To inspect the hard copy materials, please contact Ms. Donaldson.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

In 1979, under section 109 of the Clean Air Act (CAA), EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period (44 FR 8202, February 8, 1979). Primary standards are set to protect human health while secondary standards are set to protect public welfare. In 1997 we revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (62 FR 38856, July 18, 1997).¹ In 2008 we further revised the primary and secondary ozone NAAQS to 0.075 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). Ozone nonattainment areas are classified based on the severity of their ozone levels based on the area’s “design value” (77 FR 30088, 30091, May 21, 2012). The design value represents air quality in the area for the most recent 3 years. The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a “lower” classification have ozone levels that are closer to the NAAQS than areas with a “higher” classification.

In 2004 we published a first phase rule governing implementation of the 1997 8-hour ozone NAAQS (Phase 1 Rule) (69 FR 23951, April 30, 2004). The Phase 1 Rule revoked the 1-hour ozone NAAQS and provided that 1-hour ozone nonattainment areas are required to adopt and implement “applicable requirements” according to the area’s classification under the 1-hour ozone standard for anti-backsliding purposes (40 CFR 51.905(a)(i)). In a revision to the Phase 1

¹ Subsequently, we lowered the 8-hour ozone NAAQS to 0.075 ppm and classified the Houston area as a Marginal nonattainment area for the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008); 77 FR 30088 30089 (May 21, 2012). This rulemaking does not address the 2008 ozone NAAQS.

Rule, we determined that an area's 1-hour designation and classification as of June 15, 2005 would dictate what 1-hour obligations constitute "applicable requirements" (40 CFR 51.900(f), May 26, 2005, 70 FR 30592).² Applicable anti-backsliding requirements ensure continued momentum toward reducing ozone levels (80 FR 12264, 12297, March 6, 2015). The rules governing ongoing implementation of revoked ozone standards, including revisions to applicable requirements, was further revised effective April 6, 2015 (40 CFR 51.1100, March 6, 2015, 80 FR 12264). This final rule also contains provisions addressing a redesignation substitute for a revoked ozone standard. See 40 CFR 51.1105(b).

The final rule for implementing the 2008 ozone NAAQS provides that an area will be subject to the anti-backsliding obligations for a revoked NAAQS until we approve (1) a redesignation to attainment for the area for the 2008 ozone NAAQS or (2) a demonstration for the area in a redesignation substitute procedure for a revoked NAAQS (40 CFR 51.1105(b)(1)). As explained more fully in the preambles to the proposed and final rules, the redesignation substitute demonstration must show that the area (1) has attained that revoked NAAQS due to permanent and enforceable emission reductions and (2) will maintain that revoked NAAQS for 10 years from the date of EPA's approval of the showing. The rule also provides that if, after notice and comment rulemaking, we approve a redesignation substitute for a revoked NAAQS, the state may request that provisions for nonattainment new source review (NSR) for that revoked NAAQS be removed, and that other anti-backsliding obligations for that revoked NAAQS be shifted to contingency measures provided that such action is consistent with CAA sections 110(l) and 193 (40 CFR 51.1105(b)(2)).

² As of April 6, 2015, 40 CFR 51.900(f) was replaced by 40 CFR 51.1100(o). See 40 CFR 51.919 and 80 FR 12312, Mar. 6, 2015.

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties in Texas. Under the 1990 CAA Amendments the area was classified as a Severe ozone nonattainment area for the 1-hour ozone NAAQS (November 6, 1991, 56 FR 56694 and CAA section 181(a)(1)). We approved a 1-hour ozone attainment demonstration for the area (71 FR 52670, September 6, 2006). However, the EPA subsequently determined that the area failed to attain the 1-hour ozone standard by its applicable attainment date of November 15, 2007 (June 19, 2012, 77 FR 36400). As discussed below, ambient air quality monitoring data for ozone indicates that the area is now attaining the 1-hour ozone standard.

Texas provided the “Redesignation Substitute Report for the Houston-Galveston-Brazoria One-Hour Standard Nonattainment Area” (redesignation substitute report) to EPA on July 22, 2014. This report was developed consistent with the redesignation substitute option we proposed to create in our June 6, 2013 proposal (which was subsequently adopted in the March 6, 2015 final rule). The report is available through www.regulations.gov (e-docket EPA-R06-OAR-2014-0259).

II. EPA’s Evaluation of the Houston Redesignation Substitute Report

To determine whether we should approve the 1-hour ozone redesignation substitute for the HGB area we evaluated the redesignation substitute report provided by Texas and the ambient ozone data for the area in the EPA Air Quality System (AQS) database. To evaluate the report we used the applicable portions of our September 4, 1992 memo “Procedures for Processing Requests to Redesignate Areas to Attainment” (www.epa.gov/ttn/oarpg/t5/memoranda/redesignmem090492.pdf). A detailed discussion of our

evaluation can be found in the Technical Support Document (TSD) for this action. The TSD can be accessed through www.regulations.gov (e-docket EPA-R06-OAR-2014-0259).

A. Has the area attained the revoked 1-hour ozone NAAQS due to permanent and enforceable emission reductions?

Ambient air quality found in the AQS database shows that the HGB area attained the 1-hour ozone standard at the end of 2013 and maintained the standard the following year (Table 1). The area continues to maintain the 1-hour ozone standard so far in 2015 based on available data.

Table 1. 1-Hour Design Values for the HGB Area (2011-2013 and 2012-2014)

Years	1-Hour Ozone Design Value
2011-2013	0.12 ppm (121 parts per billion)
2012-2014	0.11 ppm (111 parts per billion)
Preliminary 2013-2015	0.11 ppm (107 parts per billion)

In 2013, all monitors in the HGB area had expected exceedances less than the threshold of 1.0 per year and only one monitor in the HGB area, the Houston East monitor (C1), had more than 1.0 expected exceedance in 2011 and 2012. A more detailed table of expected 1-hour ozone exceedances for the HGB monitors based on ozone data can be found in the TSD.

The HGB area redesignation substitute report provides information on emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and regulations that reduced these emissions. NO_x and VOCs are ozone precursors. Texas identified control measures for both the 1-hour ozone attainment demonstration SIP and the 1997 ozone attainment demonstration SIP that led to permanent and enforceable emission reductions. The 1-hour ozone attainment demonstration SIP was approved on September 6, 2006 (71 FR 52670). The 1997 ozone attainment demonstration SIP was approved on January 2, 2014 (79 FR 57). Additionally,

we have approved SIPs for the HGB area that document continuous emissions reductions due to permanent and enforceable measures for the 1-hour and 1997 8-hour ozone standards (70 FR 7407, February 14, 2005; 74 FR 18298, April 22, 2009; 79 FR 51, January 2, 2014). Given our previous actions approving Texas SIPs pertaining to permanent and enforceable measures, we agree with Texas' conclusion that the area has attained the 1-hour ozone NAAQS due to permanent and enforceable emission reductions. More detail on our review can be found in the TSD.

B. Will the area maintain the revoked 1-hour ozone NAAQS for 10 years from the date of our approval?

To demonstrate that the HGB area will maintain the revoked 1-hour ozone NAAQS for 10 years from the date of our approval of the redesignation substitute, the Texas report provided information on projected emissions of ozone precursors (Tables 2 and 3). The emission projections show that (1) NO_x emissions will continue to decrease through 2026 and (2) VOC emissions will decrease through 2023 and increase by 2.71 tons per year (tpy) from 2023 to 2026 (514.49 tpy in 2023 to 517.20 tpy in 2026, an increase of 0.5%). We reviewed this information and agree with the conclusion that the area will maintain the revoked 1-hour ozone NAAQS for 10 years from the date of our approval. Based on photochemical modeling analyses showing that the formation of ozone in the HGB area is more sensitive to NO_x than to VOC emissions, the small increase in VOC emissions during the 10-year maintenance period is expected to be more than offset by the 18% decrease in NO_x emissions during this same period. More detail on our review can be found in the TSD.

Table 2: NO_x Emission Projections (tons per day)

Category	2011	2014	2017	2020	2023	2026
Point Sources	108.48	126.31	126.82	127.01	127.20	127.39
Area Sources	21.15	22.19	22.90	23.28	23.17	23.23
On-Road Mobile Sources	181.28	127.70	88.85	69.80	59.28	54.51
Non-Road Mobile Sources	121.11	106.99	94.99	83.70	75.54	68.98
Total	432.02	383.19	333.56	303.79	285.19	274.11

Table 3: VOC Emission Projections (tons per day)

Category	2011	2014	2017	2020	2023	2026
Point Sources	96.11	100.81	102.86	103.29	103.71	104.12
Area Sources	308.74	321.92	332.43	339.67	342.58	346.13
On-Road Mobile Sources	80.92	60.43	46.51	40.51	38.09	36.93
Non-Road Mobile Sources	49.92	38.33	33.34	30.86	30.11	30.02
Total	535.69	521.49	515.14	514.33	514.49	517.20

III. Proposed Action

Based on the CAA's criteria for redesignation to attainment (CAA section 107(d)(3)(E)) and the regulation providing for a redesignation substitute (40 CFR 51.1105(b)), EPA is proposing to find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1979 1-hour ozone NAAQS. We are proposing to approve the redesignation substitute for the HGB area based on our determination that the demonstration provided by the State of Texas shows that the HGB area has attained the revoked 1-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. As we no longer redesignate nonattainment areas to attainment for the revoked 1-hour ozone NAAQS, approval of the demonstration would serve as a redesignation substitute

under the EPA's implementing regulations. Under this proposed action, Texas would no longer be required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area which have not already been approved into the SIP (40 CFR 51.1105(b)(1)). If this proposed action is finalized, it would also allow the state to request that the EPA approve the removal or revision of the 1-hour ozone NAAQS nonattainment NSR provisions in the SIP and, upon a showing of consistency with the anti-backsliding checks in CAA sections 110(1) and 193 (if applicable), shift 1-hour ozone NAAQS requirements that are contained in the active portion of the SIP to the contingency measures portion of the SIP (40 CFR 51.1105(b)(2)). We note that because the HGB area was classified as Severe nonattainment for the 1997 ozone NAAQS, the Severe classification NSR requirements would continue to apply if the 1-hour NSR provisions are removed (October 1, 2008, 73 FR 56983).

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duties, it does not contain any unfunded mandate or

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this proposed rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rulemaking does not affect the level of protection provided to human health or the environment because approving the demonstration provided by Texas and finding that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS does not alter the emission reduction measures that are required to be implemented in the HGB area, which was classified as Severe nonattainment for the 1997 8-hour ozone standard. *See* 73 FR 56983, October 1, 2008, and 40 CFR 51.1105. Additionally, the proposed rule is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 29, 2015.

Ron Curry

Regional Administrator, Region 6.

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